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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MICHAEL MARTINEZ,

Petitioner,

vs.

BRIAN WILLIAMS, *et al.*,

Respondents.

Case No. 3:14-cv-00282-HDM-WGC

**ORDER**

15 This is a *pro se* petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, by a  
16 Nevada state prisoner. On September 15, 2014, the Court entered an order striking the proposed  
17 petition in this case because it was not submitted on the form required by this Court for petitioners  
18 proceeding *pro se*. See Local Rules of Special Proceedings 3-1 (“[a] petition for writ of *habeas*  
19 *corpus*, filed by a person who is not represented by an attorney, shall be on the form provided by  
20 this court.”). The Court directed the Clerk to provide petitioner with the approved form for filing a  
21 *pro se* habeas corpus petition. Petitioner was directed to file an amended petition, using the court-  
22 approved habeas corpus form, within thirty days from the date of the order filed September 15,  
23 2014. (ECF No. 3). Because it appeared that petitioner failed to comply with the Court’s order to  
24 file an amended petition, the Court dismissed the instant action by order filed October 29, 2014.  
25 (ECF No. 4). Judgment was entered the same date. (ECF No. 5).

26 It has come to the Court’s attention that on October 7, 2014, petitioner prepared and signed a  
27 petition using the court-approved form. Petitioner attached to the petition a copy of the Court’s  
28 order of September 15, 2014, filed in the instant case, requiring the filing of an amended petition on

1 the court-approved form. However, the Clerk of Court opened the petition as a new case under case  
2 number 2:14-cv-1899-JCM-NJK. The petition was signed on October 7, 2014. Petitioner swears  
3 under penalty of perjury that he that he gave his *in forma pauperis* application to prison officials for  
4 mailing on October 7, 2014. Thus, it appears that petitioner intended his petition to be filed in the  
5 above-captioned case. In submitting the petition on October 7, 2014, petitioner complied with the  
6 Court's order of September 15, 2014. Therefore, by order filed May 18, 2015, the Court directed  
7 the Clerk of Court to file the petition and accompanying motions in the instant case. The Court  
8 closed case number 2:14-cv-1899-JCM-NJK. (ECF Nos. 6, 7, 8).

9 Under the circumstances, the interests of justice are best served by reopening the above-  
10 captioned case. Based on the information regarding petitioner's financial status, the Court finds that  
11 the motion to proceed *in forma pauperis* shall be granted. The Court has reviewed the habeas  
12 petition, and it shall be served on respondents.

13 Petitioner has filed a motion seeking the appointment of counsel. (ECF No. 8). Pursuant to  
14 18 U.S.C. § 3006A(2)(B), the district court has discretion to appoint counsel when it determines that  
15 the "interests of justice" require representation in a habeas corpus case. Petitioner has no  
16 constitutional right to appointed counsel in a federal habeas corpus proceeding. *Pennsylvania v.*  
17 *Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993). The  
18 decision to appoint counsel is within the Court's discretion. *Chaney v. Lewis*, 801 F.2d 1191, 1196  
19 (9th Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th  
20 Cir.), *cert. denied*, 469 U.S. 838 (1984). The petition on file in this action is sufficiently clear in  
21 presenting the issues that petitioner wishes to bring. The issues in this case are not complex.  
22 Counsel is not justified in this instance. Petitioner's motion for the appointment of counsel is  
23 denied.

24 **IT IS THEREFORE ORDERED** that the instant action is **REOPENED**.

25 **IT IS FURTHER ORDERED** that the application to proceed *in forma pauperis* (ECF No.  
26 7) is **GRANTED**.

27 **IT IS FURTHER ORDERED** that petitioner's motion for the appointment of counsel (ECF  
28 No. 8) is **DENIED**.

1           **IT IS FURTHER ORDERED** that the Clerk shall **FILE and ELECTRONICALLY**  
2 **SERVE** the petition (ECF No. 7-1) upon the respondents.

3           **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry  
4 of this order within which to answer, or otherwise respond to, the petition. In their answer or other  
5 response, respondents shall address all claims presented in the petition. Respondents shall raise all  
6 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and  
7 procedural default. **Successive motions to dismiss will not be entertained.** If an answer is filed,  
8 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in  
9 the United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have  
10 **forty-five (45) days** from the date of service of the answer to file a reply.

11           **IT IS FURTHER ORDERED** that any state court record exhibits filed by respondents shall  
12 be filed with a separate index of exhibits identifying the exhibits by number or letter. The hard copy  
13 of all state court record exhibits shall be forwarded, for this case, to the staff attorneys in the **Reno**  
14 Division of the Clerk of Court.

15           **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney  
16 General of the State of Nevada a copy of every pleading, motion, or other document he submits for  
17 consideration by the Court. Petitioner shall include with the original paper submitted for filing a  
18 certificate stating the date that a true and correct copy of the document was mailed to the Attorney  
19 General. The Court may disregard any paper that does not include a certificate of service. After  
20 respondents appear in this action, petitioner shall make such service upon the particular Deputy  
21 Attorney General assigned to the case.

22                           Dated this 28th day of May, 2015.

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25                           HOWARD D. McKIBBEN  
26                           UNITED STATES DISTRICT JUDGE  
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